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Paper No. 4

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In re Application of : SEP 22 2003
David A. Baucom :
Application No. 09/544,775 :
Filed: April 7, 2000 :
Attorney Docket No. BAM001/134920 :
: DECISION GRANTING
: PETITION
:
In re Application of :
David A. Baucom :
Application No. 10/042,758 :
Filed: October 1, 2002 :
For: Lift and Movement System for :
Shelving :
:

This is a decision on petition under 37 CFR § 1.53(e), filed July 8, 2003, requesting that an improper Continued Prosecution Application (CPA) under 37 CFR § 1.53(d) be treated as an application under 37 CFR § 1.53(b) and be accorded a filing date of October 1, 2002.

On February 4, 2002, a Notice of Allowance and Issue Fee Due and a Notice of Allowability were mailed in application No. 09/544,775, which set a three (3) month statutory period for reply. In response, on May 6, 2002, applicants paid the issue fee but failed to submit corrected drawings. On June 21, 2002, the Office mailed a Notice of Abandonment, stating that applicants failed to file timely drawings as required in the Notice of Allowability. On July 16, 2002, applicants filed a petition to revive under 37 CFR § 1.137(b) and new drawings. The application was revived by the decision of August 30, 2002. Thereafter, on October 1, 2002, applicants submitted a request for a CPA under 37 CFR § 1.53(d) based on prior application No. 09/544,775.

A CPA must be filed before the payment of the issue fee in the prior application. See 37 CFR § 1.53(d)(1)(ii)(A). Since the issue fee was paid before the CPA request was filed, the CPA is improper. It is noted that the CPA request was filed on October 1, 2002, while the prior application was pending, and was accompanied by a specification and drawings. Applicants state they inadvertently filed the CPA on October 1, 2002, instead of a divisional application under 37 CFR § 1.53(b). Applicants requests that the Office treat the CPA as an application under 37 CFR § 1.53(b) and accord the application a filing date of October 1, 2002.

Accordingly, the petition is granted.

The continuation application under 37 CFR § 1.53(b) filed on October 1, 2002, has been assigned application No. 10/042,758. The CPA request and the application papers have been removed from the file of application No. 09/544,775 and have been placed in application No. 10/042,758. Copies of the CPA request and the present petition will be retained in application No. 09/544,775 to complete the record therein. All further correspondence concerning the continuation application under 37 CFR § 1.53(b) should be directed to application No. 10/042,758, not application No. 09/544,775.

The Office finance records indicate that a \$410.00 extension of time fee was paid in application No. 09/544,775 on March 11, 2003. This amount is unnecessary and will be refunded to Deposit Account No. 50-0897. Additionally, the \$130.00 petition fee and the \$375.00 basic filing fee will be charged in application No. 10/042,758 to Deposit Account No. 50-0897.

Application No. 10/042,758 will be forwarded to the Office of Initial Patent Examination for further processing as an application filed under 37 CFR § 1.53(b), not under 37 CFR § 1.53(d), with the filing date of October 1, 2002, using the application papers filed on that date.

Application No. 09/544,775 will be forwarded to Files Repository.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

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